

**M54 – M6 LINK ROAD (THE PROJECT)
 DEADLINE 4 – 8 JANUARY 2020
 CADENT GAS LIMITED
 RESPONSE TO EXAMINING AUTHORITY’S (EXA) SECOND ROUND OF WRITTEN
 QUESTIONS**

1. INTRODUCTION

1.1 Cadent Gas Limited (**Cadent**) is a statutory undertaker for the purposes of the Planning Act 2008 (**PA 2008**) and is responding to the ExA’s second round of written questions which include questions directed at Cadent.

2. EXA QUESTIONS

2.1 Please see below Cadent’s response to the ExA’s second round of written questions.

ExA’s Question	Cadent’s Response
2.5.9 and 2.4.5	<p>Cadent’s position, as set out in its relevant representations, is that it is not satisfied that the tests under section 127 of the PA 2008 can be met unless and until it has appropriate protective provisions in place which adequately protect its existing apparatus and which properly regulate any diversions that may be required.</p> <p>Cadent is in discussion with Highways England over the form of the protective provisions. Cadent has a preferred form of protective provisions which it has provided to Highways England and which it provided to the ExA in response to ExA Question 1 (see Appendix 1 of the enclosed response dated 3 November 2020). These protective provisions should be included at Part 3 of Schedule 9 to the DCO.</p>
2.4.6 and 2.5.4	<p>As set out in Cadent’s relevant representations, Cadent will not decommission its existing apparatus and/or commission new apparatus until it has sufficient land and rights in land (to its satisfaction) to do so, whether pursuant to the DCO or otherwise. This is a fundamental matter of health and safety and network integrity.</p> <p>Under section 138 of the PA 2008, Cadent cannot be obliged to remove the apparatus unless the Secretary of State is satisfied that removal is necessary for the purpose of carrying out the development to which the DCO relates.</p> <p>Cadent requires that the DCO is flexible as to how decommissioned apparatus is managed. Leaving decommissioned apparatus in situ is emerging as environmental best practice for decommissioning gas pipelines.</p>

	<p>Under paragraph 23(5) of Cadent’s protective provisions in the dDCO, where Highways England acquire an interest in land from Cadent, it will be a condition of any such agreement that Highways England are responsible for decommissioned apparatus left in situ. Therefore, the approach to decommissioned apparatus is a matter for Highways England.</p>
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CMS CAMERON MCKENNA NABARRO OLSWANG LLP

6 JANUARY 2020



APPENDIX: CADENT'S PREFERRED PROTECTIVE PROVISIONS

**M54 TO M6 LINK ROAD (THE PROJECT)
CADENT GAS LIMITED
RESPONSE TO ExQ1**

1. INTRODUCTION

- 1.1 Cadent Gas Limited (**Cadent**) is a statutory undertaker for the purposes of the Planning Act 2008 (**PA 2008**) and is responding to the ExA's first round of written questions which include questions directed at Cadent.
- 1.2 Cadent made a relevant representation in respect of this matter on 9 April 2020 in order to protect apparatus owned by Cadent.
- 1.3 Cadent has a medium pressure and a high pressure (major accident hazard) gas pipeline, and associated below or above ground apparatus located within the order limits which is affected by the Project ("**Apparatus**").
- 1.4 Highways England also requires a section of Cadent's high pressure gas pipeline to be diverted.
- 1.5 Cadent does not object in principle to the development proposed by Highways England. It does however, object to the Authorised Development (as defined in the draft M54 to M6 Link Road Development Consent Order (the "**Draft DCO**")) being carried out in close proximity to its Apparatus and to the proposed diversions unless and until suitable protective provisions and related agreements have been secured to its satisfaction, to which see further at paragraph 2.
- 1.6 Cadent is holder of a licence under section 7 of the Gas Act 1986 and operates four gas distribution networks in North London, Central England (West and East) and the North West (the "**Licence**")
- 1.7 Cadent is required to comply with the terms of its Licence in the delivery of its statutory duties. It is regulated by the Network Code which contains relevant conditions as to safe transmission of gas and compliance with industry standards on transmission, connection and safe working in the vicinity of its Apparatus, to which see paragraph 2.

2. EXA QUESTION 1.5.52

- 2.1 The question directed at Cadent is "*could they please confirm that they are content with the provisions set out in the draft DCO in relation to their apparatus, the latest situation in relation to resolving these matters, and if not, please explain fully your reasoning*". We address this below.

Regulatory Protection Framework - Framework

- 2.2 Cadent require all promoters carrying out Authorised Development in the vicinity of their Apparatus to comply with:
- 2.2.1 GD/SP/SSW22 – Safe Working in the vicinity of Cadent High Pressure's Gas Pipelines and Associated Installations;
- 2.2.2 IGE (Institution of Gas Engineers) recommendations IGE/SR/18 Edition 2 Safe Working Practices to Ensure the Integrity of Gas Pipelines and Associated Installations, and
- 2.2.3 the HSE's guidance document HS(G)47 Avoiding Danger from Underground Services.
- 2.3 The industry standards referred to above have the specific intention of protecting:
- 2.3.1 the integrity of the pipelines and thus the distribution of gas;
- 2.3.2 the safety of the area surrounding gas pipelines; and

2.3.3 the safety of personnel involved in working with gas pipelines.

2.4 Cadent requires specific protective provisions in place for an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works in the vicinity of Cadent's Apparatus.

Protective Provisions in the Draft DCO

2.5 Cadent seeks to protect its undertaking, and insists that (in respect of connections and work in close proximity to their Apparatus) Cadent is in control of the plans, methodology and specification for works within 15 metres of any Apparatus, works which will adversely affect their Apparatus or otherwise breach distances/guidance set out above.

2.6 In respect of the proposed diversions, these have not yet reached detailed design stage and so the positioning, land and rights required for the gas diversion included within the Draft DCO may not be sufficient for Cadent. Cadent will not decommission its existing apparatus and / or commission new apparatus until it has sufficient land and rights in land (to its satisfaction) to do so, whether pursuant to the Draft DCO or otherwise. This is a fundamental matter of health and safety.

2.7 Cadent maintain that the exercise of unfettered compulsory powers or connection to its Apparatus the following consequences will arise which would cause serious detriment to its undertaking and thus mean that the tests set out in section 127 of the PA 2008 would not be met:

2.7.1 failure to comply with industry safety standards, legal requirements and Health and Safety Executive standards create a health and safety risk;

2.7.2 any damage to Apparatus has potentially serious hazardous consequences for individuals/property located in the vicinity of the pipeline/apparatus if it were to fail; and

2.7.3 potentially significant consequences arising from lack of continuity of supply.

2.8 Insufficient property rights have the following safety implications:

2.8.1 inability for qualified personnel to access apparatus for its maintenance, repair and inspection;

2.8.2 risk of strike to pipeline if development occurs within the easement zone in respect of which an easement/restrictive covenant is required to protect the pipeline from development; and

2.8.3 risk of inappropriate development within the vicinity of the pipeline increasing the risk of the above.

2.9 The Draft DCO does not yet contain fully agreed protective provisions expressed to be for the protection of Cadent to Cadent's satisfaction, making it currently deficient from Cadent's perspective.

2.10 Cadent is currently engaged with Highways England in negotiating a standardised form of protective provisions to regulate the interaction between the parties. The expectation is that this agreed form will serve as a precedent for this and future schemes and will be included on the face of the Order. The template form of protective provisions that is with Highways England for consideration is included at Appendix 1. This reflects a history of negotiation between the parties. Most of the differences between Appendix 1 and the protective provisions that are currently in the Draft DCO for this scheme are agreed between the parties.

2.11 A point where Cadent and Highways England are apart is the carve out from the scope of the indemnity at paragraph 11(3)(c) for consequential loss, which has been removed from the version of the protective provision included at Appendix 1. Cadent is in touch with Highways England directly to agree a position on this which is commercial between the parties. Cadent will update the Examining Authority as to the status of its discussions with Highways England in due course.

- 2.12 Should agreement not be possible and attendance at a Compulsory Acquisition Hearing or Issue Specific Hearing is necessary then Cadent reserve the right to provide further written information in advance in support of any detailed issues remaining in dispute between the parties at that stage.

Schedule 5: Purpose for which rights over land may be acquired

- 2.13 Article 8(4)(d) allows Highways England to transfer the benefit of the Order to Cadent, which is welcomed.
- 2.14 In respect of the plots required for the diversion of Cadent’s apparatus, the purpose for which rights over land may be acquired is listed in Schedule 5 of the Draft Order as “to construct, operate, access and maintain a diversion to an existing high pressure gas main and associated infrastructure”.
- 2.15 This is not broad enough to cover the rights that Cadent will require for its Apparatus. Cadent requires the permanent acquisition of adequate rights to Cadent’s satisfaction over the land where the gas pipelines are proposed to be diverted to (Work No. 68).
- 2.16 Cadent requires the purpose to be amended to read:

*“to construct, operate, access, maintain, **protect and decommission** a diversion to an existing high pressure gas main and associated infrastructure. (emphasis added)*

- 2.17 This expansion of the purpose is necessary because the standard easements that Cadent requires are drafted as at [2.17.1 and 2.17.2] below:

2.17.1 “To retain, lay, construct, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable [a] [the] pipeline[s] for the distribution or storage of gas or other ancillary materials (whether such gas or materials are distributed by Cadent Gas Limited on its own behalf or on behalf of other persons) and all necessary apparatus ancillary thereto (all herein together called “the Works”) in upon beneath and over [a] [the] strip[s] of land shown coloured; and

2.17.2 To pass over the Strip of Land and so much of the Land as is reasonably necessary for the purposes of the Works and any other works belonging to Cadent Gas Limited or used by or in connection with the Undertaking and which are contiguous with the Strip of Land at all reasonable times and in an emergency at any time whether or not with workmen vehicles machinery and apparatus.” (emphasis added)

- 2.18 The purpose in the Draft DCO needs to be broad enough to ensure that rights equivalent to Cadent’s standard easements can be acquired.
- 2.19 “Protect” is required for Cadent because as a gas undertaker it requires the rights to remove works or planting which affect its apparatus (i.e. buildovers, trees whose roots are affecting the pipeline etc).
- 2.20 A situation where decommissioned apparatus is left in situ (which is emerging as environmental best practice for decommissioning gas pipelines) is not covered.
- 2.21 As such, Cadent requires the purpose in Schedule 5 to be amended to include “protect and decommission”.

3. EXA QUESTION 1.7.9

- 3.1 The question directed at Cadent is as follows “*In its Relevant Representation, Cadent Gas Limited indicated concerns about planting in the vicinity of the proposed gas infrastructure (proposed works 68, 75 and 79). Could Cadent Gas Limited explain in detail what wayleaves (in terms of width) it would require, in each case, to allow for maintenance of diverted pipelines, and whether this would be sought over the whole length of the pipeline?*” We address this below.

Deed of Grant

- 3.2 In relation to the interest required by Cadent in respect of diverted gas infrastructure, Cadent must secure a deed of easement as part of the protective provisions as it has no statutory power to lay gas pipelines in private land. A legal easement is required on the basis that it is a registrable interest which is granted in perpetuity in order to protect Cadent and the public (as opposed to a wayleave which is personal between parties, and is not registrable). Cadent's standard form deed of easement should be used to ensure consistency in dealings and further, Cadent is under a statutory duty not to confer any undue preference to its customers and so has developed standardised documentation. This specifically includes (amongst others) the following covenants on the part of the landowner which will be sought over the whole length of the pipeline:

“(i) The Grantor shall not without the prior consent in writing of Cadent Gas Limited make or cause or permit to be made any material alteration to or any deposit of anything upon any part of the Strip of Land (including, without prejudice to the generality of the foregoing, the planting of any trees or shrubs) so as to interfere with or obstruct the access to the Strip of Land or to the Works by Cadent Gas Limited or so as to lessen or in any way interfere with the support afforded to the Works by the surrounding soil including minerals or so as materially to reduce the depth of soil above the Works;

(ii) The Grantor shall not erect or install or cause or permit to be erected or installed any building or structure or permanent apparatus in, through, upon or over the Strip of Land PROVIDED that in respect of the Strip of Land nothing in this Clause shall prevent the Grantor from:

(a) installing any necessary service pipes, drains, wires or cables; and/or

(b) carrying on normal acts of good husbandry including fencing, hedging and ditching; and/or

(c) landscaping or constructing roads, cycleways, footpaths and parking areas (including installing lighting and associated removable street furniture such as street or area name plates, columns, bollards, bins and seats);

in each case not so as to cause any such interference obstruction or material reduction of the depth of soil as aforesaid BUT ALWAYS SUBJECT TO and CONDITIONAL UPON Cadent Gas Limited or its agents having given its prior written consent (which shall not be unreasonably withheld or delayed but may be given subject to conditions) to any such works, uses and activities, doing such works under the supervision of Cadent Gas Limited (if required by it) and the Grantor shall supply to Cadent Gas Limited with any application for such consent all reasonable information that Cadent Gas Limited may require in order to consider any such request (including but not limited to drawings, risk assessments method statements and specifications).”

Easement Widths

- 3.3 The widths of the relevant easement strips depend on a number of factors. Please see the “Engineering Bulletin” at Appendix 2 hereto which provides some guidance on the factors involved, and standard easement widths for varying pressure tiers and materials. Please note the standard easement widths referred to in the Engineering Bulletin should not be taken as confirmation of easement widths in relation to this or any other scheme - each scheme must be considered on a case by case basis.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

3 NOVEMBER 2020

APPENDIX 1

SCHEDULES

SCHEDULE [] PROTECTIVE PROVISIONS

PART [#]

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

1. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

[“authorised works” has the same meaning as is given to the term “authorised development” in article [2(1)] of the Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule]

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised [development] [works] or activities (including maintenance) undertaken in association with the authorised [development] [works] which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise.

On Street apparatus

3.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 4, 9, 10 and 11; and
- (b) where sub-paragraph (2) applies, paragraphs 7 and 8.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) [The Protective Provisions in this Part of this Schedule apply and take precedence over article [##] of the Order which shall not apply to Cadent.]

Apparatus of Cadent in stopped up streets

4.—(1) Where any street is stopped up under article [12] (permanent stopping up and restriction of use of streets, public rights of way and private means of access – CHECK WORDING FOR DCO), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 7.

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article [[12] - AS IN SUB-PARA. (1) ABOVE], Cadent will be at liberty at all times to take all necessary access across any such street and to execute and execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

5. (1) The undertaker must exercise the powers conferred by article [##] (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed) [and if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in the view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall -

- (a) pay compensation to Cadent for any loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption. (2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement, admission of liability or compromise thereof shall be made by Cadent, save in respect of any payment requirement under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.]

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out [or maintenance] of any part of the authorised [development] [works] (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised [development] [works] [or maintenance thereof].

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 9 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 6, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 8(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 15 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

- (4) Any approval of Cadent given under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
 - (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).
- (5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Specified works must only be executed in accordance with—
- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
 - (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.
- (7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.
- (8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised [development] [works] (including such an event attributable to its maintenance)—
- (a) the undertaker must implement an appropriate ground mitigation scheme; and
 - (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.
- (11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.
- (12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

- 10.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised [development] [works] including without limitation—
- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
 - (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
 - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised [development] [works] (including works carried out under article [##] (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, [compensation] or costs properly incurred by, [paid by] or recovered from Cadent, by reason or in

consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised [development] [works] carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article [##].

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

12. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 7(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised [development] [works] and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of any agreement reached in accordance with paragraph 6(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under sub-paragraphs 7(2) and 7(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article [##] (arbitration).

Notices

16. Notwithstanding article [XX] (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph [9(1)] must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

APPENDIX 2

Engineering Bulletin EB/600 Part 1

Contact: Daniel Mee – Integrity Engineer – 07825 078637

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Easement widths associated with Cadent Gas apparatus

Background

Following the revision of the building proximity distances for PE in accordance with IGEM/TD/3 Edition 5 Steel and PE pipelines for gas distribution and EB/381 Minimum Building Proximity Distance (BPD) for PE Mains this engineering bulletin has been produced to confirm the standard easement widths associated with all Cadent Gas apparatus. This is to ensure consistency across our business operations, GDSPs and within the UIP community.

Easement widths are based upon:

- Allowing sufficient working room to install the asset
- Maintaining the building proximity distance either side of the asset
- Allowing sufficient space for a size for size replacement within the easement strip whilst still maintaining the building proximity distance (BPD)

Easement widths may need to be increased if:

- The asset is deeper than the standard depth
- There are engineering difficulties on site

This bulletin applies to anyone working on the gas distribution network.

Standard easement widths

The standard easement widths for varying pressure tiers and materials are shown below.

Pressure tier / Material	Diameter	Easement Width (total)
HP Steel	900mm, 1060mm, 1200mm (36", 42" & 48")	24.4m (80')
HP Steel	750mm and 600m (30" & 24")	18.3m (60')
HP Steel	Up to and including 450mm (18")	12.2m (40')
HP RTP	Determined on a case by case scenario	
IP Steel	All sizes	6m plus pipe diameter
IP PE > 5.5 Barg	Above 500mm (19")	30m plus pipe diameter
	356mm – 500mm	16m plus pipe diameter
	126mm - 355mm	12m plus pipe diameter
	Up to and including 125mm	12m plus pipe diameter
IP PE < 5.5 Barg	Above 500mm (19")	26m plus pipe diameter
	356mm – 500mm	8m plus pipe diameter
	126mm - 355mm	8m plus pipe diameter
	Up to and including 125mm	8m plus pipe diameter
MP PE	Above 500mm (19")	12m plus pipe diameter
	356mm – 500mm	6m plus pipe diameter
	126mm - 355mm	5m plus pipe diameter
	Up to and including 125mm	4.5m plus pipe diameter
MP Steel	All sizes	6m plus pipe diameter
MP Iron*	All sizes	6m plus pipe diameter
LP	Above 125mm	3m plus pipe diameter
	Up to and including 125mm	1m plus pipe diameter

* Any ductile iron medium pressure found within 30m of a building shall be decommissioned as soon as reasonably practicable, but no later than twelve months after the date of discovery. For further guidance please refer to GD/PM/REP/2.

Further guidance

For guidance on when an easement is required and for further information please refer to lands services in the first instance via .box.landservicesworkrequest.GD16.

For any deviation from the easement widths in the above table please refer to Engineering Services who will review the proposals.